



In the Matter of:

**ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH,**

PROSECUTING PARTY,

and

RYSZARD BIELICKI,

COMPLAINANT,

v.

LU TRANSPORT, INC.,

RESPONDENT.

ARB CASE NO. 04-053

ALJ CASE NO. 04-STA-11

DATE: March 30, 2004

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Howard Radzely, Esq., Patricia M. Rodenhausen, Esq., Donyell M. Thompson, Esq., United States Department of Labor, Washington, D.C.

For the Respondent:

James R. Hays, Esq., Kelley Drye & Warren LLP, New York, New York

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

BACKGROUND

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 1997), and implementing regulations at 29 C.F.R. Part 1978 (2003) (STAA). The parties submitted a Settlement Agreement, seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge (ALJ) below issued an Order Approving

Settlement (Order), recommending approval of the parties' agreement and dismissal of the complaint.

DISCUSSION

Pursuant to STAA § 31105(b)(2)(C), “[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.” Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary’s preliminary findings “if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ.” 29 C.F.R. § 1978.111(d)(2). The regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board as the case may be.” *Id.* In this case, at the time the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. However, pursuant to 29 C.F.R. § 1978.109(c), the Administrative Review Board, must, nevertheless, issue a final decision and order in this case. *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 00-STA-17 (ARB May 30, 2001). The parties have not filed objections to the ALJ’s Order.

The Board requires that all parties requesting settlement approval provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that the parties have not entered into other such settlement agreements. *See Bidly v. Alyeska Pipeline Serv. Co.*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996). In the instant case the parties have certified that the agreement constitutes the full and entire settlement agreement with respect to the Complainant’s claim. *See Settlement Agreement*, ¶ 6.

CONCLUSION

The parties have agreed to settle the Complainant’s STAA claim. Accordingly, we **AFFIRM** the ALJ’s Order Approving Settlement and, in accordance with the settlement agreement, we **DISMISS** this case.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge